

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	MM Docket No.
Amendment of Parts 1, 21 and 74 to Enable)	97-217
Multipoint Distribution Service)	
and Instructional Television Fixed)	File No. RM-9060
Service Licensees to Engage in Fixed)	
Two-Way Transmissions)	

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

INSTRUCTIONAL TELECOMMUNICATIONS FOUNDATION, INC.

OPPOSITION TO PETITIONS FOR RECONSIDERATION¹

I. The Commission Should Reject Petitioners' Proposal for "Streamlined Processing" of Major ITFS Modifications to the Degree That Such Entails the Automatic Grant of Interfering Applications.

The Petitioners have advanced a proposal on reconsideration which will compound an existing flaw in the initial Report and Order ("Two-Way Order") in the above-captioned proceeding. Petitioners propose that major ITFS modifications be accepted in

¹ Despite considerable efforts, Instructional Telecommunications Foundation ("ITF") has been unable to secure a copy of the Petitions for Reconsideration filed by BellSouth Corporation, et al, and Catholic Telecommunications Network. Consequently, we intend to file a supplement to this Opposition dealing with those Petitions once we have obtained copies and studied them.

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the same filing windows as two-way applications, and be subject to the same "streamlined" processing.² If adopted, this proposal means that major modification applications will be eligible for automatic grant even when they cause interference with other new proposals. This feature of Petitioners' proposal is unwise, and further illustrates the unsoundness of automatic grants as a concept.³

Consider the possibilities:

- o Two conventional major modification applications may be filed in the same window, which applications produce interference between two existing systems that previously had operated satisfactorily. Under present rules, because these applications would be considered mutually exclusive, only one of them could prevail; however, under "streamlined processing" as proposed by the Petitioners, both could be authorized.

- o A major modification of downstream facilities could be proposed at the same time that other applicants propose two-way facilities, including boosters and/or response hubs. Even if the downstream major mod. interferes with the two-way proposal---and if the booster transmissions or response stations interfere with the modified downstream system---all could be granted automatically.

ITFS major modifications include downstream power increases, long site moves, height increases, frequency changes,

² Petitioners' Petition for Reconsideration, pp.17-19.

³ Like other ITFS parties, ITF does support the processing of ITFS major modification applications in the same windows as two-way applications. See, for example, the Petition for Reconsideration of The National ITFS Association at paragraph 13. As we will discuss at greater length in this Opposition, ITF also supports streamlined processing of ITFS applications; what we oppose is the automatic grant of applications which will create interference if both facilities are constructed.

polarization changes, and changes in transmitting antenna patterns, among others. These sorts of changes have the potential to create wide-ranging new interference. Further, in regions with closely-spaced ITFS systems, the array of one-way and two-way ITFS applications that could be filed simultaneously make it possible for intricate "daisy chains" of incompatible proposals to develop. Because of the many parties and competing interests involved, it is unrealistic to expect voluntary settlement of all such complicated mutual exclusivities simply because licenses are granted automatically.

As with the grant of two incompatible two-way systems, the automatic grant of incompatible facilities involving major mods. leaves licensees with the conundrum of whether actually to construct. Significantly, it is often much less expensive to implement major modifications than to build whole new two-way systems, making it more feasible for downstream-only licensees to engage in build-it-first brinkmanship once they have secured Commission authorization for modified facilities.

In sum, Petitioners' proposal compounds what was a bad idea from the start. It should be rejected, as should the current rules' provisions that allow the automatic grant of interfering two-way proposals.

II. There are Workable Methods to Streamline Processing Which do Not Entail the Automatic Grant of Interfering Applications.

We are heartened that other parties seeking reconsideration

in this proceeding urge expedited resolution of conflicting applications without automatic grants of interfering proposals, and disagree with the Commission's rationale underpinning automatic grants.⁴

ITF agrees with the Two-Way Order's premise that it is desirable to deploy two-way facilities rapidly, and that a streamlined method of authorizing both two-way systems and conventional major modifications is needed. However, alternatives are available to the Commission which will speed the grant of new licenses without allowing mutually interfering facilities, viz: During the 60-day "reconciliation period" and the ensuing 90-day period for petitions to deny, applicants, the public, and the Commission staff could review pending proposals for defects and mutual exclusivity. If the Commission staff finds problems with a proposal, it could issue a deficiency letter to the applicant with a deadline for amendment. If the Commission staff finds a mutual exclusivity, it could notify the competing applicants of its finding. During this time, applicants would have the opportunity to petition to deny defective proposals and/or notify the Commission of apparent mutual exclusivities.

Applications which emerge from the petition to deny period

⁴ See, respectively, the Petitions for Reconsideration of the National ITFS Association at p. 8, and The San Francisco-San Jose Educator/Operator Consortium, p. 5.

without the submission of any petition to deny or allegation of mutual exclusivity would be granted automatically. Others would be processed by the Commission staff.⁵ In the event of interference conflict, only one of the mutually-exclusive applications would be granted, and the Commission could select the winner among competing proposals according to the then-current rules.

Of course, none of the foregoing precludes the voluntary settlement of mutually exclusive proposals, as the Commission encourages. Parties who settle under this system obtain faster time to market and certainty as to what facilities they will receive. ITF submits that these incentives are considerable---in our view, fully equal in strength to the incentives to settle in an grant automatic regime.⁶

III. ITF Supports the National ITFS Association's Petition for Reconsideration and the Intra-Industry "Joint Statement."

As the National ITFS Association ("NIA") points out in its Petition for Reconsideration, the Joint Statement NIA reached with the Wireless Communications Association ("WCA") was an

⁵ Applications which are subject to a Petition to Deny will be processed by Commission staff under the Rules established by the Two-Way Order; of the Petitions for Reconsideration ITF has thus far reviewed, none have objected to staff processing under these circumstances.

⁶ Most importantly, the system ITF proposes will insure that both modified downstream facilities and new upstream facilities will operate without unacceptable interference.

elaborately constructed, and long-negotiated, compromise.⁷ Both sides made concessions that they would have preferred to avoid, and the result was a rather complex agreement of carefully balanced trade-offs.

One intended effect of the Joint Statement was to help struggling wireless cable companies re-invent themselves as an industry of two-way digital telecommunications firms, while continuing to rely heavily on ITFS spectrum in their new incarnation. This intention has been embodied fully in the Two-Way Order.

The other intended effect was to retain the educational character and capabilities of ITFS operators so that any licensee, no matter how unfavorable the excess capacity lease, would be able to expand instruction via digital technology, thereby sharing the fruits of conversion to two-way. One key provision of the Joint Statement, for example, recommends rules which allow an ITFS operator to reclaim up to 25% of its system's digital capacity for instruction---although, in deference to commercial interests, this recapture can be quite gradual. In order to obtain the collective educational benefits of the Joint Statement, NIA made a number of concessions which it otherwise likely would have refused, such as supporting the extension of ITFS lease terms to 15 years.

⁷ John Schwartz, president of ITF, was a member of the committee which represented NIA in these negotiations.

Arguably, the Two-Way Order demonstrates that the intra-industry compromise was a bad idea; it embraces the pro-commercial elements of the Joint Statement, while jettisoning or attenuating many of the provisions which were intended to keep education from being lost in the hoped-for industry transformation.

ITF asks that the Joint Statement be accepted on reconsideration for two reasons. The most important is that it serves the public interest and keeps ITFS from being *de facto* reallocated as a commercial service---which, in our view, is now a real danger. The other is that when the Commission breaks apart a compromise it destroys the future incentive to compromise. Wireless cable operators and ITFS licensees are highly interdependent; this interdependence kept them working at the Joint Statement even when it appeared that the effort was futile. However, should the Two-Way Order remain unaltered, there will be no reason ever for these groups to work so hard for public policy compromise again. Inadvertently, the Commission will have fostered division where it does not belong.

IV. ITF Supports Adjustments in the Two-Way Technical Rules to Allow High Data Rate Wireless Technology and Rapid Deployment of Response Transmitters; We Oppose, However, the Deregulation of High-Power Upstream Devices.

Protection of existing ITFS receive sites against brute force overload ("BFO") was one of the most contentious issues in this proceeding, and, although we have not yet received the

Catholic Telecommunications Network's petition, we would not be surprised if it remains so upon reconsideration.

To date, we have seen no pleading on this topic which was supported by field engineering data, and thus we believe decisions must be made with a willingness to refine them. However, in this uncertain environment, measures must be taken initially to insure that BFO does not develop into a runaway problem.

Despite the uncertainties, a few items stand out.

A. The Qualcomm Proposal. ITF supports the Petition for Reconsideration filed by Quaalcom, Inc., which contains a package of measures designed to facilitate deployment of high data rate (HDR) wireless technology on ITFS and MMDS frequencies. ITF believes that HDR could bring exciting new educational and commercial applications to our spectrum. Since it delivers data at high speed and apparently low cost, we believe schools and educators will be avid adopters of the technology and we look forward to offering it among our educational services.

Because HDR equipment will operate at such low power (-6 dBw or less), we believe that it is extremely unlikely to cause problems due to brute force overload, and that, indeed, its potential for causing interference is minimal in general.

B. Petitioners' Proposal for Deregulation of High Power Upstream Transmitting Equipment. Petitioners request that "the rules be revised so that any response station can be activated

without advance notice and without professional installation unless it is within 1960 feet of an ITFS receive site registered and constructed before the filing of the application for the associated response station hub."⁸ Unlike the HDR equipment proposed by Calcium, the response transmitters which Petitioners seek to deregulate are authorized to operate with as much as 33 dBw, and thus are capable of creating interference over long distances. Interference could result from a mistake as simple as pointing the transverter in the wrong direction.

The entire upstream interference regime conceived by the Petitioners, and adopted by the Commission, posits the establishment of response service areas in which the number of upstream transmitters is limited and their operation is controlled to avoid interference. This system is not congruent with the retail sale of high-power transverters to be installed by amateurs at locations which the amateurs determine and can change at will. Indeed, the Petitioners do not advocate such do-it-yourself arrangements unless the installation takes place more than 1,960' of a registered receive site; the flaw here is that if a customer buys a transverter and installs it, there is no reliable way to know in advance that the device will be located at the appropriate distance.

In sum, ITF believes that high power response transmitters

⁸ Petitioners' Petition for Reconsideration, p. 9.

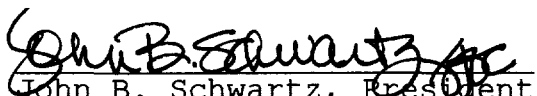
must be professionally installed.

C. Advance Notification of Response Transmitter Installation. ITF agrees with Petitioners and other parties that one business day's advance notification of a response transmitter installation is sufficient. The point of advance notification is to alert the ITFS receive site to be on the lookout for a possible new interference source. One business day is enough time to fulfill this purpose.

Respectfully submitted,

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Dated: January 9, 1999